

**DEPARTMENT OF PUBLIC HEALTH  
AND HUMAN SERVICES**

**CHAPTER 95**

**LICENSURE OF DAY CARE FACILITIES**

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## Subchapter 1

## General Requirements

37.95.101 CHILD CARE SERVICES, PURPOSES AND LICENSING

(REPEALED) (History: Sec. 52-2-704, 53-4-212 and 53-4-503, MCA; IMP, Sec. 52-2-702, 52-2-713, 52-2-721, 53-2-201, 53-4-211, 53-4-502, 53-4-601, 53-4-611 and 53-4-612, MCA; NEW, Eff. 12/31/72; AMD, Eff. 4/5/76; AMD, 1981 MAR p. 1792, Eff. 12/18/81; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1992 MAR p. 1367, Eff. 6/26/92; AMD, 1997 MAR p. 1920, Eff. 10/21/97; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.102 DEFINITIONS

(1) "Caregiver" means a licensee, registrant, employee, aide or volunteer who is responsible for the direct care and supervision of children in a day care facility.

(2) "Day care" or "child care" means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours. In addition to the previous definitional language found at 52-2-703, MCA, the term also means care to a child up to the age of 13 years except as indicated otherwise in these rules. The term does not include care by a relative, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA.

(3) "Day care center" means an out-of-home place in which day care is provided to 13 or more children on a regular basis.

(4) "Day care facility" means a person, association or place, incorporated or unincorporated, that provides day care on a regular basis or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day care home, a day care center, a group day care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713, MCA. The term does not include:

(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are three years of age or older. In addition to the previous definitional language found at 52-2-703, MCA, the term also does not include a person caring for the children of a single family; or a person, not receiving any type of state payment for day care, who is caring for children in the children's own home. In addition to the children being cared for in their own home, there may be no more than two children from another home being cared for by the same provider.

(5) "Department" means the department of public health and human services provided for in 2-15-2201, MCA.

(6) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids for pediatric use.

(7) "DTP vaccine" means a vaccine containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTaP, diphtheria, tetanus toxoid and acellular pertussis vaccine combined.

(8) "Family day care home" means a private residence in which day care is provided to three to six children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means: a day care facility providing care to no more than three children under two years of age unless care is provided for infants only. For facilities providing care only for infants, family day care home means a place in which supplemental parental care is provided for up to four infants. No other children shall be in attendance.

(9) "Group day care home" means a private residence or other structure in which day care is provided to seven to 12 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to seven to 12 children with no more than six children under two years of age, unless care is provided for infants only. For facilities providing care only for infants, group day care home means a place in which supplemental parental care is provided for up to eight infants. No other children shall be in attendance.

(a) Facilities caring for infants shall maintain a staff/infant ratio of one caregiver for each four infants in attendance unless precluded by other facility staffing requirements.

(10) "Harm to children" means harm to a child's health or welfare as defined in 41-3-102, MCA.

(11) "Health care provider" means a licensed physician, a physician assistant-certified, a nurse practitioner, a registered nurse, or a naturopathic physician practicing within the scope of the license.

(12) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenza type B disease.

(13) "Infant" means a child under the age of 24 months of age.

(14) "License" means a written document issued by the department that the license holder has complied with the applicable standards and rules for day care centers.

(15) "Local health authority" means a local health officer, local department of health, or local board of health.

(16) "MMR vaccine" means a live virus vaccine containing a combination of measles, mumps and rubella vaccine.

(17) "Night care" means care provided for a child between the hours of 7 p.m. and 7 a.m. during which the parent(s) desires a child to sleep.

(18) "Overlap care" means care provided at a day care facility for children age three and older for the times before and after school and approved by the department for a designated period of time not to exceed three hours when the number of children in care may exceed the number of children registered for care on the registration certificate.

(19) "Physician" means a person licensed to practice medicine under Title 37, chapter 3, MCA.

(20) "Preschooler" means a child between 36 months of age and the age the child will be when he or she initially enters a public or private school system.

(21) "Portable wading pool" means a structure which contains water and is used for aquatic activities and is less than 24 inches high.

(22) "Provider" means the applicant for license or registration, the licensee or registrant.

(23) "Provisional certificate" means a registration or license status that is given to a day care provider, if the provider does not meet all the registration or license requirements but is attempting to comply. This status can be granted for a period of up to three months. A second three month certificate may be issued at the discretion of the day care licensing program manager.

(24) "Public sewage system" means a system of collection, transportation, treatment or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons for a period of at least 60 days out of the calendar year.

(25) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 15 service connections at least 60 days out of the calendar year.

(26) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of Title 52, chapter 2, part 7, MCA.

(27) "Registration" means the process whereby the department maintains a record of all family day care homes and group day care homes, prescribes standards, promulgates rules, and requires the operator of a family day care home or a group day care home to certify compliance with the prescribed standards and promulgated rules.

(28) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing certified to the department compliance with this rule and the applicable standards for family day care home and group day care homes.

(29) "Regular certificate" means a license status that is given upon determination that the day care provider is meeting all requirements set forth for family day care homes, or group day care homes, or day care centers.

(30) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within three or more consecutive weeks. In addition to the previous definitional language found at 52-2-703, MCA, the term also means the child must be in attendance four or more days a week for six hours a day or more.

(31) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(a) The term includes the status of a child described above in a step or adoptive relationship.

(32) "Restricted certificate" means a license/registration status given to a registrant/licensee when it has been determined that the provider is unable to meet certain specific requirement criteria but is participating in an agreed upon plan of correction.

(33) "School-age child" means a person who is at least five years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full time student expected to complete an educational program by 19 years of age.

(34) "Supervision" means the provider and all caregivers shall be able to see or hear the children at all times.

(35) "Supplemental parental care" means the provision of day care by an adult other than a parent, guardian, or person in loco parentis on a regular basis for daily periods of less than 24 hours.

(36) "Toddler" means a child who is 24 months of age to 36 months of age.

(37) "Vaccine" means one of the following:

(a) if administered in the United States, an immunizing agent approved by the bureau of biologics, food and drug administration, United States public health services; or

(b) if administered outside the United States, an immunizing agent administered by a person licensed to practice medicine in the country where it is administered or by an agent of the principal public health agency of that country and properly documented as required by ARM 37.114.708.

(38) "Volunteer" means any person who enters into service voluntarily, but who when in service is subject to discipline and regulations like any other employee. (History: Sec. 52-2-704, 53-4-212 and 53-4-503, MCA; IMP, Sec. 52-2-702, 52-2-703, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-501, 53-4-504, 53-4-601, 53-4-611 and 53-4-612, MCA; NEW, Eff. 4/5/76; AMD, 1978 MAR p. 205, Eff. 2/5/78; AMD, 1981 MAR p. 1792, Eff. 12/18/81; AMD, 1985 MAR p. 2041, Eff. 12/27/85; AMD, 1986 MAR p. 52, Eff. 1/17/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1992 MAR p. 45, Eff. 1/17/92; AMD, 1993 MAR p. 941, Eff. 7/1/93; AMD, 1994 MAR p. 2740, Eff. 10/14/94; AMD, 1997 MAR p. 1920, Eff. 10/21/97; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

Rule 03 reserved

**37.95.104 DETERMINATION OF NEED FOR LICENSE OR REGISTRATION: COUNTING PROVIDER'S OWN CHILDREN** (1) The department shall, upon request or as its own action, make an initial count of children to determine whether an applicant or a provider is required to obtain a license or registration from the department.

(2) Children of the provider's own household or children who are present in the home or facility only when their own parent is also present shall not be counted in determining whether supplemental parental care is being provided to other children.

(3) If the initial count determines that supplemental parental care is being provided to three or more children, not counting those listed in (2), the provider shall be licensed or registered as a day care facility. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704 and 52-2-731, MCA; NEW, 2002 MAR p. 2231, Eff. 8/16/02.)

37. 95. 105 DETERMINATION OF NUMBER OF CHILDREN UNDER CARE:  
COUNTING PROVIDER' S AND OTHER CHILDREN (1) The department shall make a separate count of children, apart from the initial licensure or registration determination count, to determine the type of license or registration required. The licensure or registration type count shall not include the provider' s own children age six or over who attend school full time. The licensure or registration type count shall include all children, including the provider' s own children under age six, who are present during hours when supplemental parental care is provided.

(2) The licensure or registration count shall determine:

(a) whether the provider must be registered as a family day care home or group day care home, or licensed as a day care center;

(b) whether the day care facility is in compliance with applicable staff to child ratios;

(c) whether sufficient space is provided; and

(d) whether any other safety, health or program requirements or registration or licensure restriction requiring counting of children is affected or violated. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704 and 52-2-731, MCA; NEW, 2002 MAR p. 2231, Eff. 8/16/02.)

37. 95. 106 DAY CARE FACILITIES, REGISTRATION OR LICENSING APPLICATION (1) Any individual may apply for a registration certificate to operate a family day care home or group day care home. Any individual, agency or group may apply for a license to operate a day care center. However, an applicant who has had a previous day care application denied or who has had a day care license or registration certificate revoked or suspended may not reapply for licensure or registration within one year of the denial or revocation. If the suspension or revocation is contested and upheld after a fair hearing, the reapplication may not be made until one year after the date of the decision of the hearing officer. Applications may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, P. O. Box 202953, 2401 Colonial Drive, Helena, MT 59620-2953.

(2) Refer to 52-2-722, MCA for applications for a license or registration certificate by Indians residing on Indian reservations.

(3) Before a license without provisions or restrictions may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) an annual approved inspection report from the state fire marshal or the fire marshal's official designee indicating the fire safety rules have been met;

(b) an annual approved inspection report from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities in accordance with ARM 37.95.128, 37.95.139, 37.95.140 and 37.95.205 through 37.95.227;

(c) proof of current fire and liability insurance coverage for the day care center;

(d) a schedule of daily activities;

(e) a sample weekly menu;

(f) a DPHHS personal statement of health for licensure form for each caregiver, aide or volunteer who has direct contact with the children in care;

(g) a criminal background and child and adult protective services check on the provider or staff, including caregivers, aides, volunteers, kitchen and custodial staff and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

(h) list of current staff with ages, addresses and telephone numbers;

(i) a written fire and emergency evacuation plan. For license renewal there must also be documentation of eight annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and

(j) such other information which may be requested by the department to determine compliance with the licensing requirements.

(4) Before a registration certificate may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) a DPHHS personal statement of health form for each caregiver, aide or volunteer who has direct contact with the children in care;

(b) proof of current fire and liability insurance coverage for the provision of day care in the home;

(c) a criminal background and child and adult protective services check on the provider or staff, including caregivers, aides, volunteers, kitchen and custodial staff and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

(d) a written fire and emergency evacuation plan. For registration certificate renewal there must also be documentation of eight annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and

(e) any such other information which may be requested by the department.

(5) Applications for renewal shall be made by the provider at least 30 days prior to expiration of the license or registration certificate.

(6) A day care facility may not provide care for more than the number of children permitted at any one time by its day care license or registration certificate.

(7) Any individual, group or other agency may request that the department determine whether a facility should be licensed or registered according to law. Referral may be either in writing or by telephone. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-722, 52-2-731, 53-4-504 and 53-4-507, MCA; NEW, Eff. 12/31/72; AMD, 1981 MAR p. 1792, Eff. 12/18/81; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1993 MAR p. 1210, Eff. 6/11/93; AMD, 1995 MAR p. 23, Eff. 10/14/94; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

37.95.107 PERSONS AFFECTED BY DEPARTMENT RECORDS

(REPEALED) (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-702, 52-2-704, and 52-2-731, MCA; NEW, 1994 MAR p. 958, Eff. 4/15/94; AMD, 1994 MAR p. 2938, Eff. 11/11/94; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.108 DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES (1) The department may investigate and inspect the conditions and qualifications of any day care facility or any person seeking or holding a license or registration.

(2) A family day care home or group day care home must be registered. A day care center must be licensed.

(3) Licensing, registration and inspection of family day care homes, group day care homes and centers are the responsibility of the department with the exception of the required local health authority and state fire marshal inspections. Licensing and issuing certificates of registration are delegated to the supervisor of the day care licensing program.

(4) Registrant or licensee shall not discriminate in child admissions or employment of staff on the basis of race, sex, religion, creed, color, national origin or disability. Any determination of discrimination will be made by the Montana human rights commission.

(5) Within 30 days of receipt of the signed and completed application forms, the department will evaluate the application for registration or licensure based upon the requirements found in these rules.

(a) A prospective family day care home or group day care home that meets all requirements as evidenced by the application shall be issued a registration certificate. The registration certificate may be provisional, restricted or regular.

(b) A prospective day care center will be visited and the program and facility inspected by a licensing worker within 30 days of receipt of the completed application. If the applicant meets the requirements for licensure the department will issue a license to the applicant. The license may be either provisional or regular.

(6) A provisional registration certificate or license may be issued for a period of up to three months when the day care facility does not meet all of the requirements if the facility is attempting to comply. A second three month provisional certificate or license may be issued in special circumstances, at the discretion of the program supervisor, the total length of time of issuance not to exceed six months.

(a) A plan for full compliance with requirements for registration or licensure must be submitted by the day care facility to the department before issuance of a provisional certificate or license.

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(b) Written notification of the granting of a provisional certificate or license by the department must be made to the licensee, or registrant specifying the reason, duration and conditions for continuing or terminating the provisional certificate or license.

(c) The department may not issue a provisional license to any day care center which has not been approved by the state fire marshal and the public health authorities.

(d) The department may not issue a provisional certificate or license to any day care facility which does not have current public liability insurance and fire insurance.

(7) Regular registration certificates and licenses are issued from the department's quality assurance division licensure bureau for periods up to three years.

(8) The department, after written notice to the applicant, licensee or registrant, may deny, suspend, restrict, revoke or reduce to a provisional status a registration certificate or license upon finding that the applicant has not met the requirements for licensure or registration set forth in these rules.

(9) Suspension or revocation may be immediate if:

(a) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation reveals that there are reasonable grounds to believe that a child in the facility may be in danger of harm;

(b) the department requests and is denied access to the licensed or registered facility;

(c) the provider has made any misrepresentations to the department, either negligently or intentionally, regarding any information requested on the application form or necessary for registration or licensing purposes;

(d) the provider, a member of the provider's household or staff has been named as the perpetrator in a substantiated report of child abuse or neglect as defined in ARM 37.95.1016.

(e) through a child care licensing investigation, it is determined that the provider, provider staff or member of the provider's household has violated a licensing regulation which results in the harm to a child as defined in 41-3-102, MCA; or

(f) information received from law enforcement and tribal law enforcement indicating the provider has caused physical, sexual or emotional harm to a child.

(10) The provider shall maintain all policies, records, and reports that are required by the department. These policies, records and reports must be reviewed and updated annually.

(11) The registration certificate or license is not transferable to another operator or site.

(12) The department must be notified of any changes that would affect the terms of the registration or licensure.

(13) Separate registration certificates and licenses shall be required for programs maintained on separate premises even when operated by the same provider. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-723, 52-2-731, 52-2-732 and 52-2-733, MCA; NEW, Eff. 12/31/72; AMD, 1978 MAR p. 205, Eff. 2/5/78; AMD, 1981 MAR p. 1792, Eff. 12/18/81; AMD, 1985 MAR p. 177, Eff. 2/15/85; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 1664, Eff. 10/27/89; AMD, 1991 MAR p. 1000, Eff. 6/28/91; AMD, 1993 MAR p. 1210, Eff. 6/11/93; AMD, 1995 MAR p. 23, Eff. 10/14/94; AMD, 1996 MAR p. 1311, Eff. 5/10/96; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

37.95.109 CAREGIVER QUALIFICATIONS FOR ALL DAY CARE FACILITIES (1) Each caregiver must have experience in the care and supervision of children. Aides and volunteers lacking the experience with children required by this rule may obtain such experience through provision of supervised care in the facility.

(2) Each director, caregiver, volunteer, support staff adult or person over the age of 18 residing in the home shall have a state criminal, a child protective services/adult protective services (CPS/APS) and if applicable, a tribal criminal and child protective services (CPS) background check conducted.

(a) The state shall not grant approval or licensure nor allow a license or registration approval if any director, caregiver, volunteer or support staff person or person over the age of 18 residing in the home has been convicted by a court of competent jurisdiction of a felony or misdemeanor involving:

- (i) child abuse or neglect;
- (ii) spousal abuse;
- (iii) a crime against a child or children (including child pornography); or
- (iv) a crime involving violence, including rape, sexual assault or homicide, but not including other physical assault or battery.

(b) The state shall not grant approval nor allow a license or registration approval if any director, caregiver, volunteer or support staff person or person over the age of 18 residing in the home has, within the last five years been convicted by a court of competent jurisdiction of a felony or misdemeanor involving:

- (i) physical assault;
- (ii) battery; or
- (iii) felony drug related offense.

(c) A caregiver who is charged with a crime involving children or physical or sexual violence against any person or any felony drug related offense and awaiting trial may not provide care or be present in the facility pending the outcome of the trial.

(3) No director, caregiver or adult in residence shall be currently diagnosed or receiving therapy or medication for a mental illness or emotional disturbance which might create a risk to children in care. Mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist.

(a) The department may request that a person obtain a psychological or psychiatric evaluation at the individual's expense if there is reasonable cause to believe such a mental illness or emotional disturbance exists.

(4) No director, caregiver or adult in residence shall be chemically dependent upon illegal drugs or alcohol or use legal drugs or medications in a habitual and inappropriate manner. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request a person obtain an evaluation at the provider's own expense if there is reasonable cause to believe chemical dependence exists.

(5) No director, caregiver or adult in residence shall have been named as a perpetrator in a substantiated report of child abuse or neglect, or been named as perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act, or of a person protected by a similar law in another jurisdiction.

(6) No director, caregiver or adult in residence shall be identified through a department licensing investigation to have violated a licensing regulation which results in or knowingly allows harm to a child as defined in 41-3-102, MCA.

(7) The provider and all caregivers shall possess good character, and be physically, mentally and emotionally competent to care for children and free from communicable disease. The provider and all caregivers shall comply with tuberculosis testing requirements set out in ARM 37.114.1010 and the immunization requirements of ARM 37.95.702.

(8) The provider is responsible for assuring that the persons covered by this subchapter have met these requirements before providing care or within a reasonable time from the date that the person begins providing care.

(9) No staff member, aide, volunteer or other person having direct contact with the children in the facility shall pose any potential threat to the health, safety and well being of the children in care.

(10) Caregivers must supervise children at all times.

(a) The provider and all caregivers shall be responsible for direct care, protection, supervision and guidance of children through active involvement or direct observation. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-723, 52-2-731 and 52-2-735, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

Rules 10 and 11 reserved

**37.95.112 COUNTING CHILDREN IN CARE (REPEALED)**

(History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704 and 52-2-731, MCA; NEW, 1994 MAR p. 2740, Eff. 10/14/94; AMD, 1997 MAR p. 578, Eff. 3/25/97; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

**37.95.113 INFANT NEEDS OF NON-INFANTS (REPEALED)**

(History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704 and 52-2-731, MCA; NEW, 1994 MAR p. 2740, Eff. 10/14/94; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rule 14 reserved

37.95.115 DAY CARE PARENT INFORMATION (1) The following written information shall be made available to all parents:

(a) a typical daily schedule of activities;  
(b) admission requirements, enrollment procedures, hours of operation;

- (c) frequency and type of meals and snacks served;  
(d) fees and payment plan;  
(e) regulations concerning sick children;  
(f) transportation and trip arrangements;  
(g) discipline policies; and  
(h) department day care licensing requirements.

(2) Day care facility shall post a copy of the facility registration or license and the phone number of state and local quality assurance division offices in a conspicuous place. Parents should be encouraged to contact the division if they have questions regarding the license or the day care regulations.

(3) The licensee or registrant shall allow custodial and non-custodial parental access as well as access by legal guardians to the facility at any time during which child day care services are provided, unless there is a current court order preventing parent-child contact. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-723, 52-2-731 and 52-2-735, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

37.95.116 FAMILY CHILD CARE HOME AND GROUP CHILD CARE HOME REGISTRATION SERVICES PROVIDED (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, Eff. 12/31/72; AMD, 1981 MAR p. 1792, Eff. 12/18/81; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1993 MAR p. 1210, Eff. 6/11/93; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.117 DAY CARE FACILITIES, JOINT PROGRAMS (1) Any day care facility which operates a day care program in connection with another non-day care program on the same premises must have separate staff and separate space for each program. However, staff and space may be shared for janitorial, maintenance, cooking, or other support services.

(2) Children attending the facility for day care shall not come in contact with other persons who are receiving care in the facility unless the provider can prove to the department's satisfaction that those persons will not pose any threat to the health, safety and well being of the children in day care.

(3) If multiple programs, including multiple day care programs or facilities in the same building, increase the number of people regularly in the building to more than 12 individuals, all fire, safety and sanitation requirements which may be impacted must be complied with by the day care facility.

(a) multiple day care group homes which are currently operating under a "double group" registration within a single structure will have three years or until September 30, 2003, to either upgrade to center status and meet all center requirements, or relinquish one group registration and limit the number of children accordingly.

(4) Persons, corporations or organizations may be licensed or registered for more than one day care facility if facility sites, staff, and space are completely separate from one another.

(a) If the day care facility is housed in a private single-family living structure, the structure can only obtain one registration or license.

(b) If the multiple program day care facility is in a non-residential structure, and is owned by the same entity or person it will be licensed as a center and will be required to meet all center regulations.

(c) If more than one day care program exists in one retail or commercial structure, and there are separate owners or entities of each program, the department will grant individual registrations or licenses.

(d) If the day care facility is contained in a multi-family structure, such as an apartment building, the structure will be allowed to house multiple day care facilities that meet the requirements of (1) and (2) above.

(e) If the facility is licensed or registered as a day care facility, but also serves as a foster care home, the department's child and family services (CFS) regional administrator and quality assurance division (QAD) must approve the dual license or registration. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

Rules 18 through 20 reserved

**37.95.121 SAFETY REQUIREMENTS** (1) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

(2) All medications must be kept in their original containers, labeled with the original prescription label in a place inaccessible to children.

(3) No extension cord will be used as permanent wiring. All appliances, lamp cords and exposed light sockets must be suitably protected to prevent electrocution.

(4) Any pet or animal, present at the home, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The provider is responsible for maintaining the animal's vaccinations and vaccination records. These records must be made available to the department upon request. The provider must make reasonable efforts to keep stray animals off the premises.

(5) Guns must be kept in locked storage. Ammunition must be kept in locked storage separate from the gun.

(6) The indoor and outdoor play areas must be clean, reasonably neat, and free from accumulation of dirt, rubbish, or other health hazards.

(7) Any outdoor play area must be maintained free from hazards such as wells, machinery and animal waste. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair that is at least four feet high without any holes or spaces greater than four inches in diameter or natural barriers to restrict children from these areas.

(a) Outdoor play areas shall be designed so that all parts are always visible and easily supervised by staff.

(8) Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges, sharp corners, splinters, unguarded ladders on slides, and must be kept in good repair and well maintained.

(9) Toys and objects with a diameter of less than one inch (2.5 centimeters), objects with removable parts that have a diameter of less than one inch (2.5 centimeters), plastic bags, styrofoam objects, and balloons must not be accessible to children who are still placing objects in their mouths.

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(10) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions. Recommended ground covers under these items include sand, fine gravel or woodchips with a depth of the ground cover being at least six inches.

(11) Trampolines are prohibited for use by children in care. Trampolines on facility premises must be inaccessible to children in care.

(12) The poison control number (1-800-524-5042) must be posted at all telephone locations at the day care facility.

(13) Use of waterbeds, water mattresses, gel pads or sheepskin covers for children's sleeping surface is prohibited.

(14) In an emergency, all occupants must be able to escape from the facility, whether a home or building, in a safe and timely manner.

(a) All facilities must have two accessible exits on each level that are unlocked when children are in care and are easily operable from the inside with a single action. The two exits must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to the exits must be kept clear of obstructions. Deadbolt locks that can be opened from the inside only with a key are prohibited.

(b) Exit doors, windows, and their opening hardware must be maintained in good repair at all times. (History: Sec. 52-2-704 and 52-2-731, MCA; IMP, Sec. 52-2-704 and 52-2-734, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

Rules 22 through 24 reserved

37.95.125 CHILD CARE FACILITY AND BLOCK GRANT BENEFITS, HEARING (REPEALED) (History: Sec. 2-4-201 and 52-2-704, MCA; IMP, Sec. 2-4-201 and 52-2-726, MCA; NEW, 1995 MAR p. 1423, Eff. 7/28/95; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.126 DAY CARE FACILITIES, SMOKE-FREE ENVIRONMENT

(1) Children shall be afforded a smoke-free environment during all day care hours, whether indoors or outdoors.

(2) The registrant or other licensee shall ensure that no smoking occurs within the facility while children are in care. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704 and 52-2-731, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.127 DAY CARE FACILITIES SWIMMING (1) Children may not be allowed to use a swimming pool, unless it and the surrounding area are constructed and operated in accordance with ARM 37.95.227.

(2) Portable wading pools, as defined in ARM 37.95.102, are permitted in day care facilities.

(a) When children are utilizing a portable wading pool, an approved caregiver shall always be present and actively supervising.

(b) If the portable wading pool is filled with water and will sit unused for any period of time prior to use by day care children, the caregiver shall equip the wading pool with a barrier to prevent a young child's unsupervised access.

(i) A barrier refers to a fence, a wall, or gate or screen that locks.

(c) Portable wading pools must be emptied after the day's use and sanitized.

(3) Children shall not be permitted in hot tubs, spas, or saunas.

(a) Hot tubs must have bolted and securely locked covers.

(b) Spas and saunas must be inaccessible to children.

(4) Bathtubs, buckets and other water receptacles shall be emptied immediately after use.

(5) Ponds shall be fenced to prevent access to children.

(6) All in ground and above ground swimming pools located in the outdoor play space area or accessible to children must be fenced with a locked gate. The fence shall be at least five feet high and come within 3 1/2 inches of the ground. The fence shall be constructed to discourage climbing. Exit and entrance points shall have self-closing, positive latching gates with locking devices a minimum of 55 inches from the ground. The child care building wall shall not constitute one side of the fence unless there are no openings in the wall. When children are swimming, supervision must include at all times at least one person currently certified in red cross advanced life saving or an equivalent certificate by a recognized organization. This person shall not be counted in the staff-child ratio. One person with a life guard training certificate is required for each group of 25 or fewer children.

(a) Each swimming pool more than six feet in width, length or diameter shall be provided with a ring buoy and rope and either a throw line or a shepherd's hook. Such equipment shall be of sufficient length to reach the center of the pool from the edge of the pool and shall be safely and conveniently stored for immediate access.

(b) All pool pumping equipment shall be screened to prevent access and injury.

(7) Swimming pool safety rules shall be posted near the swimming pool.

(8) The staff-child ratio shall be maintained whenever children participate in swimming activities, including swimming instruction. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-731 and 52-2-735, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

**37.95.128 DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH RISKS FOR INFANTS** (1) A day care facility must have on file a health record form, provided by the department, concerning any special health risks that would affect other children. This must be obtained and kept on file by the provider prior to residence or enrollment of the infant in the day care facility. The health record form must be signed by:

(a) a physician licensed to practice medicine in Montana pursuant to Title 37, chapter 3, MCA; or

(b) a physician assistant-certified licensed to practice in Montana and practicing under a utilization plan approved by the board of medical examiners; or

(c) a person licensed in Montana as a professional nurse and recognized by the board of nursing as a nurse practitioner or clinical nurse specialist; or

(d) a naturopathic physician licensed under Title 37, chapter 26, MCA. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-731, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 29 through 31 reserved

37.95.132 TRANSPORTATION (1) The provider shall obtain written consent from the parent(s) for any transportation provided.

(2) The operator of the vehicle shall be at least 18 years of age and possess a valid driver's license.

(3) The passenger doors on the vehicle must be locked whenever the vehicle is in motion.

(4) With the exception of public transportation or rented or leased buses which are not required by law to be equipped with safety restraints, no vehicle shall begin moving until all children are seated and secured in age and weight appropriate safety restraints, which must remain fastened at all times the vehicle is in motion. Each child shall have his or her own safety restraint. Children shall not share a safety seat or a safety restraint.

(5) Children shall never be left unattended in a vehicle.

(6) The back of pickup trucks must not be used to transport children.

(7) Facilities providing transportation for children under four years of age or 40 pounds shall comply with the following requirements:

(a) all vehicles shall be equipped with children's car seats or booster seats that meet federal department of transportation standards for the age and weight of the child being transported;

(b) car seats or booster seats shall be fastened securely to the seat or to the floor of the vehicle. Children shall be secured with safety belts which are secured within the vehicle according to factory assembly;

(c) there shall be no more than one child in each car seat;

(d) there shall be one adult in addition to the driver for each four infants being transported; and

(e) an adult shall accompany each child to and from the vehicle to the child's home or the home authorized by the parents to receive the child.

(8) No child shall be left unattended in a vehicle.  
(History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-731, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

Rules 33 through 38 reserved

37. 95. 139 DAY CARE FACILITIES, HEALTH CARE REQUIREMENTS

(1) The parent(s) of each child admitted to the day care facility shall provide the name of the physician or health care facility the parent wishes to have called in case of an emergency.

(2) If, while in care, a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care, the parent shall be notified by the provider. The parent is responsible for arranging to have the child taken home.

(3) The department hereby adopts and incorporates by reference ARM 37.114.1010, which sets standards for tuberculin testing of those working in day care facilities, and treatment and monitoring of positive cases among them. A copy of ARM 37. 114. 1010 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, Helena, MT 59620-2951.

(4) The director, owner, manager, or person in charge of the day care facility must designate a staff member to check daily the health status of each child immediately upon that child's entry into the day care facility, and to exclude any child showing symptoms of illness, under the following guidelines:

(a) Children must be without fever of 101°F or greater for 24 hours before they return to the day care facility, except that children with immunization-related fevers need not be excluded if they are able to participate in the routine of the day care facility.

(b) Children must be without vomiting and diarrhea for 24 hours before they return to the day care facility. Vomiting includes two or more episodes in the previous 24 hours. Diarrhea is defined as an increased number of stools, increased water in the stool, and/or decreased form to the stool that cannot be contained by a diaper or clothing;

(c) Children with any of the bacterial infections listed below must be treated with antibiotics for 24 hours before they return to the day care center:

- (i) strep throat;
- (ii) scarlet fever;
- (iii) impetigo;
- (iv) bacterial conjunctivitis (pinkeye); and
- (v) skin infections such as draining burn or infected wounds or hangnails;

(d) Generalized rashes, including those covering multiple parts of the body, must be evaluated by a health care provider to determine their cause before the child can return to the day care facility;

(e) Children with chickenpox may not be admitted to the day care facility until their sores dry up, which usually takes five to seven days. Day care providers must not purposefully expose susceptible children to chickenpox, even with the permission of the susceptible child's parents;

(f) Children who are jaundiced must be excluded until a health care provider evaluates the cause and authorizes the child to return to the day care facility;

(g) Children with symptoms of severe illness, such as uncontrolled coughing, breathing difficulty or wheezing, stiff neck, irritability, poor food or fluid intake, or a seizure, must be evaluated by a health care provider before they may return to the day care facility;

(h) A child need not be excluded for a discharge from the nose which is not accompanied by a fever.

(5) If a child develops symptoms of illness while at the day care facility and after the parent or guardian has left, the day care facility must do the following:

(a) isolate the child immediately from other children in a room or area segregated for that purpose;

(b) contact and inform the parent or guardian as soon as possible about the illness and request the parent or guardian to pick up the child;

(c) report each case of suspected communicable disease the same day by telephone to the local health authority, or as soon as possible thereafter if no contact can be made the same day.

(6) When a child is absent, the day care provider shall obtain the reasons so the interest of the other children may be properly protected. If a reportable communicable disease is suspected, the provider shall inform a health officer. No child shall be re-admitted after an absence until the reason for the absence is known and there is assurance that the child's return will not harm that child or the other children. Disease charts that identify the reportable diseases are available from the department.

(7) The day care facility may readmit a child excluded for illness whenever, in its discretion:

(a) the child either shows no symptoms of illness;

(b) the child has been free of fever, vomiting, or diarrhea for 24 hours; or

(c) the child has been on antibiotics for at least 24 hours for bacterial infections.

(8) The parent or guardian may also provide the day care facility with a signed certification of health from a licensed physician, except that the following restrictions must be followed:

(a) If a child is excluded for shigellosis or salmonella, the child may not be re-admitted until the child has no diarrhea or fever, the child's parent or guardian produces documentation that two stools, taken at least 24 hours apart, are negative for shigellosis or salmonella, and the local health authority has given written approval for the child to be readmitted to the day care facility;

(b) If a child is excluded for hepatitis A virus infection, the child shall remain excluded until either one week after onset of illness or jaundice, if the symptoms are mild, or until immune globulin has been administered to appropriate children and staff in the day care facility as directed by the local health authority.

(9) Good health habits, such as washing hands, must be taught during everyday activities.

(10) Every employee, volunteer, or resident at a day care facility must:

(a) have an examination for tuberculosis prior to commencing work at the day care facility, in conformity with ARM 37.114.1010;

(b) be excluded from the day care facility if the person has a communicable disease, a sore throat or cold that is accompanied by a fever of 101° or greater, or if the person exhibits any of the symptoms outlined in (4) for which a child would be excluded;

(c) wash their hands and exposed portions of their arms with a cleaning compound in a sink by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clear water, paying particular attention to the areas underneath the fingernails and between the fingers, at the following times:

(i) after touching bare human body parts other than clean hands and clean exposed portions of arms;

(ii) after using the toilet;

(iii) after every diapering;

(iv) after coughing, sneezing, or using a handkerchief or disposable tissue;

(v) immediately before engaging in food preparation and before feeding any child;

(vi) during food preparation as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks; and

(vii) after engaging in other activities that contaminate the hands; and

(d) provide documentation of complete measles, mumps, and rubella immunizations and a tetanus and diphtheria booster within the 10 years prior to commencing work, volunteering, or residing at the day care facility.

(11) Each provider shall develop policies for first aid. These policies must include directions for calling parents or someone else designated as responsible for the child when a child is sick or injured. The provider shall immediately call the poison control number (1-800-525-5042) when a child is suspected of having been poisoned.

(12) A first aid kit must be kept on site at all times and contain at least the following:

(a) unexpired syrup of ipecac (one ounce bottle) or activated charcoal;

(i) these substances may only be administered upon directive from the poison control center of the local emergency service program (i.e., 9-1-1 operator, local hospital or physician).

(b) sterile, absorbent bandages;

(c) a synthetic ice or gel pack;

(d) tape and a variety of band-aids;

(e) tweezers and scissors;

(f) the poison control number (1-800-525-5042); and

(g) disposable single use gloves.

(13) A portable first aid kit containing at least the items listed in (12) above must accompany staff and children on trips away from the facility.

(14) The provider shall submit a report to the appropriate local office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized, requiring ambulance transport or intervention, or physician treatment, or any fire in the facility when the services of the fire department were required. A copy of the report shall be provided to the parents of the child(ren) involved, and a copy retained on file at the day care facility.

(15) A notation of all injuries must be made on the child's medical record including the date, time of day, nature of the injury, treatment, and whether the parent was notified.

(16) All children of an appropriate age shall be taught to use and flush the toilet, and to wash their hands after using the toilet, and before eating. (History: Sec. 52-2-704 and 52-2-735, MCA; IMP, Sec. 52-2-731 and 52-2-735, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

37.95.140 IMMUNIZATION (1) Before a child may attend a Montana day care facility, that facility must be provided with the documentation required by (4) below that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with (8) below:

<u>Age at Entry</u>	<u>Number of Doses-Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of MMR vaccine administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age
by 19 months of age	3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age

(\*) varies depending on vaccine type used.

(2) If the child is at least 12 months old but not less than 60 months of age and has not received any Hib vaccine, the child must receive a dose prior to entry.

(3) DT vaccine administered to a child less than seven years of age is acceptable for purposes of this rule only if accompanied by a medical exemption meeting the requirements of ARM 37.114.715 that exempts the child from pertussis vaccination.

(4) Documentation of immunization status for purposes of this rule consists of a completed Montana certificate of immunization form (HPS-101), including the date of birth, the name of each vaccine provided, and the month, day and year of each vaccination.

(5) In order to continue to attend a day care facility, a child must continue to be immunized on the schedule described in (1) above and must be immediately excluded from attendance in the day care facility if the child is not vaccinated on that schedule with all of the required vaccines, or does not have on file at the day care facility a record of medical exemption or a conditional enrollment form which indicates that no vaccine dose is past due.

(6) Hib vaccine is not required or recommended for children five years of age and older.

(7) Doses of MMR vaccine, to be acceptable under this rule, must be given no earlier than 12 months of age and a child who received a dose prior to 12 months of age must be revaccinated before attending a day care facility.

(8) A child may initially conditionally attend a day care facility if:

(a) the child has received at least one dose of each of the vaccines required for the child's age;

(b) a form prescribed by the department documenting the child's conditional immunization status is on file at the day care facility and is attached to the department's Montana certificate of immunization (HPS-101); and

(c) the child is not past due for the next required dose (as noted on the conditional enrollment form) of the vaccine in question.

(9) If a child in attendance at the day care facility, a resident of the day care facility, or a staff member or volunteer contracts any of the diseases for which this rule requires immunization, all individuals infected and all persons attending the day care facility who are not completely immunized against the disease in question or who are exempted from immunization must be excluded from the day care facility until the local health authority indicates to the day care facility that the outbreak is over.

(10) The day care facility must maintain a written record of immunization status of each enrolled child and each child of a staff member who resides at the day care facility. The facility must make those records available during normal working hours to representatives of the department or the local health authority.

(11) A child seeking to attend a day care facility is not required to have any immunizations which are medically contraindicated. A written and signed statement from a physician that an immunization is medically contraindicated will exempt a person from the applicable immunization requirements of this rule.

(12) A child under five years of age seeking to attend a day care facility is not required to be immunized against Haemophilus influenza type B if the parent or guardian of the child objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious beliefs of the person signing the statement.

(13) The department hereby adopts and incorporates by reference ARM 37.114.715 which sets the requirements for a medical exemption from vaccination. A copy of ARM 37.114.715 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951.

(14) The department hereby adopts and incorporates by reference ARM 37.114.708, which contains standards for documentation of the immunization status of persons commencing school attendance. A copy of ARM 37.114.708 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951. (History: Sec. 52-2-735, MCA; IMP, Sec. 52-2-735, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.141 RECORDS (1) The facility shall keep a daily attendance record of the children for whom care is provided.

(2) The facility shall have a master list of the name, address and phone number of all children in their care and their parents.

(3) All records of the facility shall be made available to the department upon request.

(4) Prior to a child being enrolled or entered into a day care facility, the following must be on file on forms provided by the department:

(a) written information on each child explaining any special needs of the child, including allergies;

(b) a release or authorization of persons allowed to pick up the child;

(c) necessary medical forms, including signed and updated immunization records and the names of emergency contact persons; and

(d) an emergency consent form. This form must accompany staff when children are away from the day care site for activities. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-731, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00.)

## Subchapter 2

## Public Health Requirements for Day Care Centers

37.95.201 DEFINITIONS (REPEALED) (History: Sec. 53-4-506 and 52-2-735, MCA; IMP, Sec. 53-4-506 and 52-2-735, MCA; NEW, 1982 MAR p. 1116, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 02 through 04 reserved

**37.95.205 SOLID WASTE** (1) In order to ensure that solid waste is safely stored and disposed of, a day care center must:

(a) store all solid waste between collections in containers which have lids and are corrosion resistant, fly-tight, watertight, and rodent-proof;

(b) clean all solid waste containers frequently;

(c) utilize exterior collection stands for the containers referred to in (a) above which prevent the containers from being tipped, protect them from deterioration, and allow easy cleaning below and around them;

(d) transport or utilize a private or municipal hauler to transport the solid waste at least weekly to a solid waste facility approved by the department in a covered vehicle or covered containers. (History: Sec. 52-2-735 and 53-4-406, MCA; IMP, Sec. 52-2-735 and 53-4-506, MCA; NEW, 1982 MAR p. 1116, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES, 1998 MAR p. 2881.)

**37.95.206 LAUNDRY** (1) In order to ensure that soiled laundry does not endanger the health of children, a day care center must:

(a) refrain from storing soiled laundry in a dining, food preparation, or food storage room, and ensure that such soiled laundry is not accessible to children;

(b) provide sufficient space for sorting and storing clean and soiled laundry so that clean and soiled laundry do not contact the same surface or each other;

(c) machine wash all laundry at a minimum initial water temperature of 140°F and a minimum time of eight minutes, and dry all laundry in a hot air tumble dryer vented to the outside of the building;

(d) in regard to bedding:

(i) launder bedding whenever it is soiled and air it out periodically to prevent mildew; and

(ii) assure that bedding assigned to one child is not used by another until it is laundered;

(e) handle reusable diapers as prescribed in ARM 37.95.210. (History: Sec. 52-2-735 and 53-4-506, MCA; IMP, Sec. 52-2-735 and 53-4-506, MCA; NEW, 1982 MAR p. 1116, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES, 1998 MAR p. 2881.)

**37. 95. 207 GENERAL HOUSEKEEPING** (1) As general housekeeping measures, a day care center must ensure that:

(a) its building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;

(b) its floors, walls, ceilings, furnishings, and other equipment are easily cleanable and are kept clean;

(c) soap and disposable towels or other hand-drying devices are always available at all hand washing sinks. Common-use cloth towels are prohibited;

(d) toilet tissue is provided next to all toilets;

(e) the temperature is maintained at a minimum of 65°F in the areas used for day care;

(f) at the end of each week of use, or more frequently as needed, toys are cleaned and sanitized in a solution containing 1/4 cup household bleach to one gallon of water or a comparable sanitizing solution, air dried after sanitizing, rinsed with clean water and air dried;

(g) hand sinks and bathing facilities are provided with water at a temperature of at least 100°F and not more than 120°F;

(h) cleaners used in cleaning bathtubs, showers, sinks, urinals, toilet bowls, toilet seats and floors, contain fungicide or germicide;

(i) cleaning devices for toilets, sinks, and tubs are kept separate from each other, and cleaning devices used on toilet bowls, toilet seats, or urinals, are not used for any other purpose and are kept out of the reach of children;

(j) dry dust mops and dry dust cloths are not used; and

(k) cleaning compounds and pesticides are stored separately and out of the reach of children, used, and disposed of in accordance with the manufacturer's instructions. (History: Sec. 52-2-735 and 53-4-506, MCA; IMP, Sec. 52-2-735 and 53-4-506, MCA; NEW, 1982 MAR p. 1116, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES, 1998 MAR p. 2881; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

Rules 08 and 09 reserved

**37.95.210 SPECIAL REQUIREMENTS FOR CHILDREN REQUIRING CRIBS OR DIAPERS** (1) If a day care center cares for children requiring cribs or diapers, it must:

(a) ensure that cribs, playpens, and toys used by those children are made of washable, nontoxic materials and are kept clean and sanitized with a solution containing 1/4 cup household bleach to one gallon water or equivalent sanitizing solution, air dried, rinsed with clean water and air dried. This must be done daily;

(b) either provide separate cribs for each such child, or launder bedding in accordance with ARM 37.95.206(4);

(c) have adequate facilities to bathe such children when necessary that are separate from food service, food preparation, and play or sleeping areas;

(d) handle diapers in the following manner:

(i) provide an adequate and cleanable area for diaper changing separate from food preparation and play areas;

(ii) after each diapering, thoroughly clean and sanitize the diapering area, using a solution of 1/4 cup household bleach to one gallon water or an equivalent sanitizing solution, air dry, rinse with clean water and air dry;

(iii) store soiled diapers in easily cleanable or lined receptacles with tight-fitting lids in an area inaccessible to children; and empty, clean, and wash the receptacles once per day or more often as needed;

(iv) refrain from dipping soiled diapers in a toilet, although fecal contents of diapers may be shaken into a toilet;

(v) ensure that all staff members who diaper children wash their hands immediately after each diapering following the procedures outlined in ARM 37.95.221(7)(c). The hands of the diapered infant must also be washed; and

(vi) equip diapering and toilet areas with a hand washing sink that is separated by at least six feet from the infant food preparation area, hand washing sink, and equipment used for food preparation, except if the provider submits to the local health authority a written plan which describes an alternative means that does not have the potential to cause adverse health effects.

(e) request parents to provide a supply of clean clothes adequate to allow at least one change per day and adequate diapers for a day's use;

(f) allow the use of non-disposable diapers. If non-disposable diapers are used, they must be handled in accordance with the following, in addition to the requirements of (d):

(i) Soiled diapers for each child must be placed in a plastic sack designated for that child, which in turn must be placed in a non-permeable, covered container and either picked up by a diaper service or commercial laundry or sent home the same day with the parent in the plastic sack;

(ii) Soiled diapers must either be laundered by a commercial laundry or diaper service, or at another site removed from the day care facility;

(iii) If a diaper service or commercial laundry is used, soiled diapers must be picked up by the service or laundry at least twice weekly; and

(iv) Soiled cloth diapers may not be rinsed on site.  
(History: Sec. 52-2-735, MCA; IMP, Sec. 52-2-735, MCA; NEW, 1982 MAR p. 1117, Eff. 5/28/82; AMD, 1992 MAR p. 444, Eff. 3/13/92; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES; 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

Rules 11 through 13 reserved

**37.95.214 FOOD PREPARATION AND HANDLING** (1) The department hereby adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, with exceptions, which sets sanitation and food handling standards for food service establishments. A copy of ARM Title 37, chapter 110, subchapter 2 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.

(2) A day care center must comply with all requirements set for food service establishments in ARM Title 37, chapter 110, subchapter 2, with the following exceptions from the rules noted below.

(3) A domestic style dishwasher may only be used if it is equipped with a heating element and the following conditions are met:

(a) The dishwasher:

(i) is capable of washing and sanitizing all dishware, utensils and food service equipment normally used for the preparation and service of a meal in one cycle;

(ii) must have water at a temperature of at least 165°F when it enters the machine, if it uses hot water for sanitization;

(iii) if it uses a heat cycle with a heating element for sanitization, must be allowed to run through the entire cycle before it is opened;

(b) At least a two-compartment sink is provided as a backup facility in the event the dishwasher becomes inoperable; and

(c) If the two-compartment sink is used, all dishware, utensils, and food service equipment are thoroughly cleaned in the first sink compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label, and sanitized in the second compartment by immersion in any chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of at least 75°F for one minute, and air-drying before being stored.

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(4) ARM 37.110.220 and 37.110.221 do not apply to a day care center. Instead, a day care center must provide lavatories, water closets, and urinals in the ratio of the number of each to the number of individuals using them noted below, taking into account children, staff, and volunteers:

<u>Water Closets</u>		<u>Urinals</u>	<u>Lavatories</u>
Male	Female	If over 20 males, may substitute 1/2 the number of toilets required.	1: 60
1: 20	1: 20		
May combine male and female unless fixture requirement exceeds two.			

(5) ARM 37.110.232(2) through (6) do not apply to a day care center. The food preparation area may be used as a family kitchen.

(6) ARM 37.110.238 does not apply to a day care center, i.e., licensure as a food service establishment is not required.

(7) ARM 37.110.239 does not apply to a day care center, since each day care center is already subject to the inspection and training requirements of 53-4-506, MCA.

(8) Food must be obtained from sources that comply with the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA, and no home canned foods may be used.

(9) Potentially hazardous foods must be maintained at an internal temperature under 45°F or over 140°F. A food (stem) thermometer must be available to measure these temperatures.

(10) Food that has been in family-style service containers, on the table, or in the service area must be disposed of after the meal.

(11) Ground beef must be cooked to a minimum internal temperature of 155°F and have clear juices and a uniform brown color with no pink.

(12) The department hereby adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, which sets forth requirements for food service establishments. Copies of these rules may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951. (History: Sec. 52-2-735 and 53-4-506, MCA; IMP, Sec. 52-2-735 and 53-4-506, MCA; NEW, 1982 MAR p. 1117, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES, 1998 MAR p. 2881.)

**37.95.215 NUTRITION** (1) The department hereby adopts and incorporates by reference 7 CFR 226.19 and 226.20, containing meal requirements for day care facilities participating in the child and adult care food program of the US department of agriculture, food and nutrition service. A copy of 7 CFR 226.19 and 226.20 may be obtained from the department's nutrition consultant, Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Bureau, P. O. Box 202951, Helena, MT 59620-2951.

(2) Each day care center must do the following, with the exception noted in (4) below:

(a) serve meals and snacks which meet the requirements for meals contained in 7 CFR 226.19 and 226.20, including the following:

(i) Breakfast for children who are between one and 12 years old must include one serving of fruit, vegetable, or 100% fruit or vegetable juice; one serving of enriched bread or bread alternate; and one serving of fluid milk;

(ii) Lunch and supper for children who are between one and 12 years old must include one serving of meat or meat alternate; two vegetables or two fruits or one vegetable and one fruit; one serving of bread or bread alternate; and one serving of fluid milk;

(iii) Snacks for children who are between one and 12 years old must include two of the following four food components: meat or meat alternate, fruit or vegetable or 100% fruit or vegetable juice, bread or bread alternate, or fluid milk;

(iv) Serving sizes must be appropriate to the child's age as outlined in 7 CFR 226.19 and 226.20;

(v) The specific nutritional requirements for children under one year old as outlined in 7 CFR 226.19 and 226.20 must be followed.

(b) serve meals and snacks on, at a minimum, the following schedule to children in attendance:

(i) snacks at mid-morning and mid-afternoon;

(ii) lunch;

(iii) breakfast, before 9:00 am, or supper if a child is being cared for in the center at the normal time for those meals and has not otherwise received them.

(c) ensure that each bottle-fed infant from newborn to one year of age is held upright during bottle feedings until the child is able to hold the bottle, and that bottles are not propped;

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(d) for each child with nutritional therapeutic needs, request and carefully follow special dietary instructions, in writing, from either the child's parent or guardian, or a physician or registered dietitian, if the parent/guardian fails to or cannot provide such instructions. Food brought from home for special dietary purposes must be carefully labeled with the child's name;

(e) plan menus at least two weeks in advance, date and post the menus where parents/guardians can see them, and serve meals and snacks in accordance with the posted menus, with the exception that a menu change may be made so long as it is posted before parents arrive to check in children on the date of service;

(f) provide supervision to children while they eat and assist the children to eat, if necessary;

(g) offer drinking water at regular intervals to infants and toddlers and ensure that drinking water is freely available to all children; and

(h) keep on file at the day care center written menu records and special dietary instructions for infants and children for one year following the date of the meal service.

(3) If a day care center does not participate in the department's child care food program, the center must do the following in addition to meeting the requirements contained in (2) above:

(a) obtain guidance materials from the department about child care food program meal requirements and adhere to the recommendations therein; and

(b) within one year after it begins operation, and once annually thereafter, ensure that a registered dietitian evaluates the nutritional adequacy of its meals and their compliance with this rule, and that the dietitian makes a written report, to be retained on file at the day care center, containing the following information, with a copy to the department:

(i) findings and recommendations pertaining to the nutritional adequacy of food served to the children;

(ii) an assessment of management of meals, and any infant or therapeutic diets;

(iii) date of the evaluation;

(iv) evaluator's signature and dietitian registration number.

(4) If a parent sends food with a child for consumption at the day care center, the center need not provide meals or snacks for the child to the extent that food is provided by the parent for that meal or snack, but is required to do the following:

(a) provide the child with a meal or snack meeting the requirements of (2) above whenever the parent has not provided food for that meal or snack;

(b) post a copy of the meal requirements referred to in (2)(a) above in an area where it will be readily seen by parents;

(c) at least annually, provide each parent who has ever sent food to the center for consumption by a child a copy of the meal requirements referred to in (2)(a) above. (History: Sec. 52-2-735 and 53-4-506, MCA; IMP, Sec. 52-2-735 and 53-4-506, MCA; NEW, 1982 MAR p. 1119, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES, 1998 MAR p. 2881.)

Rules 16 through 19 reserved

37.95.220 IMMUNIZATION (REPEALED) (History: Sec. 52-2-735 and 53-4-506, MCA; IMP, Sec. 52-2-735 and 53-4-506, MCA; NEW, 1982 MAR p. 1117, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.221 HEALTH SUPERVISION AND MAINTENANCE (REPEALED) (History: Sec. 52-2-735 and 53-4-506, MCA; IMP, Sec. 52-2-735 and 53-4-506, MCA; NEW, 1982 MAR p. 1118, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; AMD, 1995 MAR p. 1041, Eff. 6/16/95; AMD, 1998 MAR p. 762, Eff. 3/27/98; TRANS, from DHES, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 22 through 24 reserved

**37.95.225 WATER SUPPLY SYSTEM** (1) The department hereby adopts and incorporates by reference ARM 17.38.207, stating maximum microbiological contaminant levels for public water supplies, and the following department publications setting construction, operation, and maintenance standards for springs (surface water) and wells:

(a) Circular WQB-1 "Montana Department of Health and Environmental Sciences Standards for Water Works," 1992 edition; and

(b) Circular WQB-3 "Montana Department of Health and Environmental Sciences Standards for Small Water Systems," 1992 edition.

(c) Copies of ARM 17.38.207 and Circulars WQB-1 and WQB-3 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.

(2) In order to ensure an adequate and potable supply of water, a day care center must either:

(a) connect to a water supply system meeting the requirements of ARM Title 17, chapter 38, subchapters 2, 3, and 4; or

(b) if the day care center is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including children, staff, and residents; and an adequate public water supply system is not accessible; utilize a non-public water supply system whose construction and use meet those standards set in the following circulars published by the department:

(i) Circular WQB-1 "Montana Department of Health and Environmental Sciences Standards for Water Works," 1992 edition; and

(ii) Circular WQB-3 "Montana Department of Health and Environmental Sciences Standards for Small Water Systems," 1992 edition.

(3) If a non-public water supply system is used in accordance with (2)(b) above, a day care center must:

(a) submit a water sample at least quarterly to a laboratory licensed by the department to perform microbiological analysis of water supplies in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 17.38.207, incorporated by reference in (1) above;

(b) prior to beginning operation, submit a water sample to a laboratory licensed by the department to perform chemical analysis of water supplies in order to determine that the maximum contaminant levels for nitrate (10 milligrams per liter) and nitrite (1 milligram per liter) are not exceeded.

(4) A day care center must replace or repair the water supply system serving it whenever the water supply:

(a) contains microbiological contaminants in excess of the maximum levels contained in ARM 17.38.207, as incorporated by reference in (1) of this rule, or nitrate or nitrite in excess of the maximum contaminant level stated in (3)(b) of this rule; or

(b) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal. (History: Sec. 52-2-735 and 53-4-506, MCA; IMP, Sec. 52-2-735 and 53-4-506, MCA; NEW, 1982 MAR p. 1121, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES, 1998 MAR p. 2881.)

37.95.226 SEWAGE SYSTEM (1) The department hereby adopts and incorporates by reference ARM Title 17, chapter 38, subchapter 1, which provides standards for on site subsurface wastewater treatment systems. A copy may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety, P.O. Box 202951, Helena, MT 59620-2951.

(2) In order to ensure sewage is completely and safely disposed of, a day care center must:

(a) connect to a public sewage system meeting the requirements of ARM Title 17, chapter 38, subchapter 1; or

(b) if the day care center is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including children, staff, and residents; and an adequate public sewage system is not available; utilize a non-public system whose construction and use meet the standards for such systems set by the local board of health and the construction and operation standards contained in ARM Title 17, chapter 38, subchapter 1, and incorporated by reference in (1) of this rule, with the proviso that the size of the system be determined using a rate of 20 gallons per day per child and per staff member attending the day care center, plus 75 gallons per day per resident.

(3) A day care center must replace or repair a failed system as defined by ARM 17.36.903(6) or the local health code. (History: Sec. 52-2-735 and 53-4-506, MCA; IMP, Sec. 52-2-735 and 53-4-506, MCA; NEW, 1982 MAR p. 1121, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES, 1998 MAR p. 2881.)

37.95.227 SWIMMING POOLS (1) In regard to swimming, a day care center must:

(a) allow children to use only a swimming pool which is constructed and operated in accordance with ARM Title 37, chapter 111, subchapter 11 and in accordance with ARM 37.95.127;

(b) provide and utilize each day the pool is used a chlorine test kit to ensure that the required chlorine residual is present in the pool at all times; or

(c) in the event that a portable wading pool, as defined in ARM 37.95.102, is used, add one tablespoon household bleach to 100 gallons of water to the pool on the day of use; drain, clean, and refill it with fresh water daily, and refill it with fresh water when needed. Bleach must be added any time the pool is refilled and drained. (History: Sec. 52-2-735 and 53-4-506, MCA; IMP, Sec. 52-2-735 and 53-4-506, MCA; NEW, 1982 MAR p. 1117, Eff. 5/28/82; AMD, 1995 MAR p. 473, Eff. 3/31/95; TRANS, from DHES, 1998 MAR p. 2881; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

Rules 28 and 29 reserved

37.95.230 SMOKE FREE ENVIRONMENT IN CHILD CARE FACILITIES  
(REPEALED) (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704 and 52-2-731, MCA; NEW, 1995 MAR p. 25, Eff. 12/23/94; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.231 GROUP CHILD CARE HOMES, HEALTH CARE REQUIREMENTS  
(REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1993 MAR p. 1210, Eff. 6/11/93; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.232 GROUP CHILD CARE HOMES, NUTRITION (REPEALED)  
(History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 33 and 34 reserved

37.95.235 FAMILY CHILD CARE HOMES, HEALTH CARE REQUIREMENTS  
(REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 717, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1993 MAR p. 1210, Eff. 6/11/93; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 36 through 39 reserved

37.95.240 FAMILY AND GROUP CHILD CARE HOMES CARING FOR INFANTS, DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH RISKS  
(REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1992 MAR p. 45, Eff. 1/17/92; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Subchapters 3 through 5 reserved

## Subchapter 6

## Day Care Centers

37.95.601 CHILD CARE CENTERS, LICENSING SERVICES PROVIDED (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-503, 53-4-504, 53-4-508 and 53-4-511, MCA; NEW, Eff. 12/31/72; AMD, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.602 DAY CARE CENTERS, PROGRAM REQUIREMENTS (1) The program conducted in a day care center shall be written and shall provide experiences which are responsive to the individual child's pattern of chronological, physical, emotional, social and intellectual growth and well being. Both active and passive learning experiences shall be conducted in consultation with parents.

(a) This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the daily program in operation, reviews the written daily program and confirms the program is based upon the criteria below:

(i) the center maintains an ongoing process of parent-staff cooperation in development and modification of program goals;

(ii) the center provides a diversity of experiences during the day for each child with opportunity for quiet and active experiences, group and individual activities, the exercise of choice and experience with different types of equipment and materials;

(iii) the center provides opportunities during the day when the child can take responsibility, such as getting ready for snacks or meals, getting out or putting away materials, taking care of the child's own clothing;

(iv) the center provides experiences for children to learn about the world in which they live including opportunities for field trips to places of interest in the community and/or presentations by family and other community people to further expand the exposure and experiences of the children. Caregivers are required to secure a release from parents before children are taken on field trips;

(v) the center provides learning experiences for the children regarding the value of food in relation to growth and development;

(vi) the center provides opportunities for children to develop language skills and to improve readiness for reading and writing by regularly exposing the children to books, drama, poetry, music and other forms of expression. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-704, 52-2-723, 53-4-504 and 53-4-508, MCA; NEW, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

37. 95. 603 CHILD CARE CENTERS, RECORDS (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 04 and 05 reserved

37.95.606 DAY CARE CENTERS, DISCIPLINE (1) Caregivers shall use appropriate forms of discipline. Physical punishment, including spanking or other forms of corporal punishment, is strictly prohibited in day care facilities. Discipline shall include positive guidance, redirection and the setting of clear limits that foster the child's ability to become self-disciplined.

(2) Any punishment or discipline which is humiliating, shaming, frightening, or otherwise damaging is strictly prohibited.

(3) Parental or guardian permission does not allow for the use of any punishments listed in (1) or (2) above.

(4) The provider is responsible for ensuring that each caregiver participates in an in-service training session regarding discipline and guidance techniques appropriate for children. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-723, 52-2-731, 53-4-504 and 53-4-508, MCA; NEW, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.607 CHILD CARE CENTERS, SCHEDULING (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504 and 53-4-508, MCA; NEW, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 08 and 09 reserved

**37.95.610 DAY CARE CENTERS, SPACE** (1) A day care center must have sufficient indoor and outdoor space for the number and ages of children in care.

(2) This requirement shall be deemed to have been satisfied if:

(a) the facility has a minimum of 35 square feet per child of indoor space, exclusive of floor area devoted to fixed equipment or support functions such as kitchens, bathrooms, offices, etc. as well as 75 square feet per child of outdoor play space; and

(b) the equipment and furniture arrangement permits unobstructed floor area sufficient to allow vigorous play appropriate for each group of children in care, as well as arrangements of sleeping equipment which permit easy access to every child and unobstructed exits.

(3) Outdoor play areas at the facility must be surrounded by a fence that is at least four feet high and in good repair without any holes or spaces greater than four inches in diameter. Outdoor areas must be designed so that all parts are always visible to allow for direct supervision by child care staff.

(4) The center may obtain an exception from the department from the above requirements for the following reasons:

(a) limited outdoor space is offset by a greater amount of indoor space, such as a gym, permitting an equivalent activity program;

(b) limited indoor space is offset by sheltered outdoor space where climate permits reliance on outdoor space for activities normally conducted indoors; or

(c) limited outdoor or unfenced space is offset by the availability or use of an adjacent school playground, nearby parks, or other safe outdoor play area. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-723, 52-2-731, 53-4-504 and 53-4-508, MCA; NEW, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

**37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE**

(1) A day care center must have sufficient space and appropriate furniture and equipment to provide for support functions and to provide for the reasonable comfort and convenience of staff and parents.

(2) This requirement shall be deemed to have been satisfied if the center has appropriate storage and work areas adjacent to the area of use, to accommodate the following functions if these are conducted on the premises:

(a) administrative office functions, record storage, meeting arrangements for staff or for parent conference offering privacy of conversation;

(b) food preparation and serving;

(c) custodial services;

(d) laundry;

(e) rest area for staff relief periods; and

(f) storage of program materials and manipulative toys to be used and rotated at different times during the year. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-723, 52-2-731, 53-4-504 and 53-4-508, MCA; NEW, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.612 CHILD CARE CENTERS, TRANSPORTATION (REPEALED)  
(History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

(1) The amount and variety of materials and equipment available, and their arrangement and use, must be appropriate to the developmental needs of the children in care.

(a) This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the program in operation and approves the selection, arrangement and use of materials and equipment, based on the criteria below:

(i) Centers shall maintain a housekeeping area, table activities (manipulative toys) area, block building area, library or other quiet area, and a creative arts area. Arrangement of these areas shall be such that quiet and active zones are separated and not conflicting;

(ii) the quantity and quality of materials and equipment shall be sufficient to permit multiple use of the same item by several children so excessive competition and long waits are avoided;

(iii) materials and equipment shall be of sufficient quantity and quality to provide for a variety of experiences and appeal to the individual interests of the children in care;

(iv) furniture shall be durable, safe, and clean and be child size or appropriately adapted for children's use;

(v) storage shelves shall be provided to children at their level.

(2) Play equipment and materials must include items from each of the following six categories: dramatic role playing, cognitive development, visual development, auditory development, tactile development and large-muscle development.

(3) High chairs, when used, must have a wide base and a safety strap.

(4) Each child, shall have clean, sanitized and age-appropriate rest equipment. Seasonably appropriate covering, such as sheets or blankets, for a crib, cot, bed or mat must be provided. Crib mattresses and other rest equipment shall be waterproof and regularly sanitized.

(5) Each facility must have a working telephone.

(6) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and poison control center (1-800-525-5042) must be posted by each telephone. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-723, 52-2-731, 53-4-504 and 53-4-508, MCA; NEW, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 14 through 17 reserved

37. 95. 618 DAY CARE CENTERS, AFTER SCHOOL CARE (1) A day care center serving school-age children shall supplement and augment the child's activities at school and at home.

(2) This requirement shall be deemed to have been satisfied if the licensing representative has observed the program in operation and the program is based on the criteria below:

(a) adult supervision is provided for individual and group pursuit, in developmentally appropriate crafts, sewing, cooking, art, music, or other activities;

(b) provision is made for children to participate in activities outside the center with appropriate adult supervision;

(c) children have the opportunity appropriate to the child's age to participate in making rules and have opportunities to express objections to them;

(d) children have the opportunity to choose the activity in which they would like to participate and have ample opportunities to participate in child directed activities; and

(e) parents have had the opportunity to participate in planning and approving the after-school activities and have participated in approving rules and agree on the handling of infractions of the rules. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-723, 52-2-731, 53-4-504 and 53-4-508, MCA; NEW, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

37. 95. 619 DAY CARE CENTERS, NIGHT CARE (1) A day care center offering night care must develop plans for program, staff, equipment and space which will provide appropriately for the personal safety and emotional and physical care of children away from their families at night.

(2) This requirement shall be deemed to have been met if:

(a) special attention is given by the caregiver and the parents to provide for a transition into this type of care appropriate to the child's emotional needs;

(b) a selection of toys for quiet activities which can be used with minimal adult supervision is provided for children prior to bedtime;

(c) bathing facilities, comfortable beds or cots, and complete bedding, are provided;

(d) staff are available to assist children during eating and pre-bedtime hours and during the morning period when dressing;

(e) during sleeping hours, staff are awake, in the immediate vicinity, and on the same floor level of sleeping children in order to provide for the needs of children and respond to any emergency; and

(f) at appropriate times a nutritious dinner and/or breakfast is served to children and a bedtime snack is offered. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-723, 52-2-731, 53-4-504 and 53-4-508, MCA; NEW, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

### 37.95.620 DAY CARE CENTERS, STAFFING REQUIREMENTS

(1) Each day care center will have a director. The director shall have a bachelor's degree in a related field plus one year experience in child day care or child development associate certification (CDA) or three years experience in a licensed or registered day care facility. If the director also acts as a caregiver, or conducts in-service training, the director must meet the qualifications of a primary caregiver.

(2) A primary caregiver must be at least 18 years of age and shall meet all of the qualifications of (3)(d) plus the following:

(a) two years experience as a licensed or registered group or family day care home provider or day care center staff person or hold a bachelor of arts or an associate degree in education or a related field;

(b) hold a current course completion card in infant, child and adult CPR and infant choking response; and

(c) be currently certified in standard first aid.

(3) An aide must be directly supervised by a primary caregiver and shall be at least 16 years of age and meet the following qualifications:

(a) sufficient language skills to communicate with children and adults;

(b) be in good mental and physical health;

(c) have at least one day of on-the-job orientation; and

(d) verify that they have received a minimum of at least eight hours of continuing education annually provided by the department or other professional child care education and development programs of national, state or local child care organizations, or college course work in early childhood areas, or child development. Continuing education must relate to the Montana early care and education knowledge base, including, at a minimum:

- (i) personal attributes/characteristics;
- (ii) health, safety and nutrition;
- (iii) child growth and development;
- (iv) environmental design;
- (v) child guidance;
- (vi) family and community partnerships;
- (vii) program management;
- (viii) curriculum;
- (ix) observation and assessment;
- (x) professionalism; or
- (xi) cultural and developmental diversity.

(4) Any person who provides care to children in a day care facility with the exception of volunteers as specified in (9), for at least 160 hours a year is required to maintain the eight hours of continuing education.

(5) The provider shall maintain written records regarding each caregiver which include:

- (a) a record of training and experience; and
- (b) three references from persons unrelated to the caregiver attesting to the caregiver's character and suitability for the job.

(6) The director, assistant director or any staff member of the day care center who suspects that a child may have been abused or neglected shall report their concerns to the county office of the department.

(7) The provider shall keep personal information about the child and the child's family confidential.

(8) The child to staff ratio for a day care center is:

- (a) 4:1 for infants zero months through 23 months;
- (b) 8:1 for children two years through three years;
- (c) 10:1 for children four years through five years; and
- (d) 14:1 for six years and over.

(9) Only the provider, primary caregiver(s) and aides may be counted as staff in determining the staff ratio. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-735, 53-4-504, 53-4-506 and 53-4-508, MCA; NEW, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 177, Eff. 2/15/85; AMD, 1985 MAR p. 2041, Eff. 12/27/85; AMD, 1986 MAR p. 52, Eff. 1/17/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1994 MAR p. 958, Eff. 4/15/94; AMD, 1995 MAR p. 931, Eff. 5/26/95; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

37.95.621 CHILD CARE CENTERS, PARENT INFORMATION

(REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, 53-4-506 and 53-4-508, MCA; NEW, 1982 MAR p. 709, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 22 through 29 reserved

**37.95.630 CHILD CARE CENTERS, SAFETY REQUIREMENTS**

(REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 31 through 39 reserved

**37.95.640 DAY CARE CENTERS, LICENSING SERVICES PROVIDED**

(1) The department will provide the following:

(a) assistance to the applicant to meet licensing requirements;

(b) referral services concerning child problems;

(c) consultation to the day care center in providing enrichment experiences for the children, proper environment and nutrition; and

(d) technical assistance to day care centers for staff training.

(2) The department or its authorized representative shall make periodic unannounced visits to all licensed day care centers to ensure continued compliance with licensing requirements.

(History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-731 and 52-2-733, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

## Subchapter 7

## Group and Family Day Care Homes

**37.95.701 GROUP AND FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS** (1) The provider and all persons responsible for children in the day care home must be at least 18 years of age and must be in good mental and physical health.

(2) The provider and all staff, including caregivers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility must obtain a completed criminal background check and a completed child protective services check before providing direct care to the children attending the day care facility. The director or provider/owner of the facility is responsible for ensuring that copies of these reports are on file at the facility.

(3) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children through active involvement or observation in group and family day care facilities.

(4) The provider shall report immediately any child suspected of being abused or neglected to the county office of the department.

(5) The provider shall cooperate with the department regarding all aspects of registration and shall allow department workers immediate access to their homes for on site visits at all times the children are in care.

(6) The provider shall keep personal information about the child and the child's family confidential.

(7) The provider shall attend a basic day care orientation or its equivalent provided or approved by the department within the first 60 days of certification. This orientation must include the following areas:

- (a) health;
- (b) safety;
- (c) child development/well being;
- (d) discipline/guidance;
- (e) nutrition/food safety; or
- (f) business aspects of a child care business.

(8) The provider and all caregivers must verify that they have received a minimum of at least eight hours of continuing education annually provided by the department or other professional child care education and development programs of national, state or local child care organizations, or college course work in early childhood areas or child development. Continuing education must relate to the Montana early care and education knowledge base, including, at a minimum:

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- (a) personal attributes/characteristics;
- (b) health, safety and nutrition;
- (c) child growth and development;
- (d) environmental design;
- (e) child guidance;
- (f) family and community partnerships;
- (g) program management;
- (h) curriculum;
- (i) observation and assessment;
- (j) professionalism; or
- (k) cultural and developmental diversity.

(9) For the first year of registration by the facility or employment by the provider or caregiver, the mandatory orientation required in (7) above will be considered sufficient to meet the eight hour continuing education requirement.

(10) Any person who provides care to children in a day care facility for at least 160 hours a year is required to maintain the eight hours of continuing education.

(11) The provider must hold current course completion cards in cardio-pulmonary resuscitation infant, child and adult CPR and infant choking response and standard first aid. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-735 and 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; AMD, 1985 MAR p. 177, Eff. 2/15/85; AMD, 1985 MAR p. 2041, Eff. 12/27/85; AMD, 1986 MAR p. 52, Eff. 1/17/86; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1993 MAR p. 1210, Eff. 6/11/93; AMD, 1994 MAR p. 958, Eff. 4/15/94; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

37.95.702 GROUP DAY CARE AND FAMILY DAY CARE HOMES, STAFFING AND ADDITIONAL REQUIREMENTS (1) Except for approved overlap care there shall be at least two caregivers caring for the children at all times when there are more than six children present at the home.

(2) There shall be no more than six infants in a group day care home or three infants in a family day care home at any time, unless care is provided for infants only.

(3) There shall be sufficient staff so that an adult is always present and supervising all children.

(4) Except for approved overlap care, the provider may not provide care for a child if caring for that child would cause the provider to exceed the number of children the provider is registered to care for on the registration certificate.

(5) The provider shall keep a daily attendance record of the children for whom care is provided.

(6) The provider shall have a master list of the name, address and phone number of all children in care and their parents.

(7) All records of the day care home shall be made available to the department upon request. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-731, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 03 and 04 reserved

**37.95.705 GROUP AND FAMILY DAY CARE HOMES, BUILDING REQUIREMENTS** (1) The day care home must have a minimum of 35 square feet per child of indoor space, excluding floor area devoted to fixed equipment or support functions such as kitchen, offices, bathrooms, etc., as well as 75 square feet per child of outdoor play space. All areas used for day care purposes must have at least one door for egress of not less than 34 inches wide and a minimum of one other means of egress of at least 24 inches high by 20 inches wide of full clear opening. If windows are used for egress, the total area must be 5.7 square feet of clear opening. If windows are used for rescue or exiting purposes, the provider shall have a written and feasible evacuation plan. All exits must be unobstructed at all times.

(2) Basements, if in use, must be dry, well ventilated, warm and well lighted.

(3) All rooms used for napping by children must have at least one operable window which can be readily used for ventilation. If this window is also considered for rescue or exiting, then the window(s) must meet egress requirements and the provider must have a feasible evacuation plan.

(4) Third stories in dwellings must not be used for day care purposes and must be barricaded or locked to prevent entry by children.

(5) Doorways and stairs must be clear of any obstruction.

(6) Every closet door must be such that children can open the door from the inside.

(7) Every bathroom door must be designed to permit the opening of the locked door from the outside in an emergency and the opening device must be readily accessible to the provider.

(8) Protective receptacle covers must be installed on electrical outlets in all areas occupied by children under five years of age.

(9) The home and grounds used by children must be maintained to ensure the following:

(a) the building is in good repair;

(b) the floors, walls, ceilings, furnishings, and other equipment are reasonably clean;

(c) the building and grounds are reasonably free of insects, rodents and other vermin; and

(d) that the children attending the facility shall not be exposed to paint containing lead in excess of .06%. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731, 52-2-734 and 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

37. 95. 706 GROUP AND FAMILY DAY CARE HOMES, FIRE SAFETY REQUIREMENTS (1) In an emergency, all occupants of the day care facility must be able to escape from the home or building in a safe and timely manner.

(a) the ground or main level must have two accessible exits easily opened from the inside with a single action. Deadbolt locks that can be opened from the inside only with a key are prohibited. The two exits must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to the exits must be kept clear of obstructions.

(2) Exit doors, windows and their opening hardware must be maintained in good working order at all times.

(3) A fire extinguisher must be easily accessible on each floor level. The minimum level of extinguisher classification is 2A10BC. Fire extinguishers shall be located near outside exit doors.

(4) All day care facilities must have operating UL smoke detecting devices installed throughout the facility in accordance with the manufacturer's specifications. If individual battery-operated smoke detectors are used, the following maintenance is required: All day care facilities must have operating UL smoke detecting devices installed throughout the facility in accordance with the manufacturer's specifications. If individual battery-operated smoke detectors are used, the following maintenance is required:

(a) smoke detectors must be tested at least once a month to ensure that they are operating correctly and have new operating batteries installed at least once each calendar year; and

(b) the placement and number of detectors in a home or building must be adequate to awaken all sleeping occupants.

(5) All wood burning stoves must meet building codes for the installation and use of such stoves. If used during the hours of care, the stove must be provided with a protective enclosure.

(6) No portable electric or unvented fuel-fired heating devices are allowed. All radiators, if too hot to touch, must be provided with protective enclosure.

(7) A minimum of eight fire drills must be conducted annually, at least one month apart as weather permits. Records, including who conducted the drill, when the drill took place, and how long it took to evacuate everyone must be available for review. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731, 52-2-734 and 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

37.95.707 GROUP CHILD CARE HOMES, SAFETY REQUIREMENTS (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.708 GROUP AND FAMILY DAY CARE HOMES, OTHER FACILITY REQUIREMENTS (1) Each home must have hot and cold running water with at least one toilet provided with toilet paper and one sink provided with soap and paper towels.

(2) Each facility must have a working telephone. Those facilities which have an unlisted number must make this number available to the parents and emergency contact persons of the children in care, and the appropriate regional or local offices of the department.

(3) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and poison control center (1-800-525-5042) must be posted by each telephone.

(4) No provider shall actively operate another business in the facility during the time the children are present for day care services.

(5) When a municipal water supply system is not available, a private system may be developed and used as approved by the state or local health department. Testing must be conducted at least annually by a certified lab to ensure that the water supply remains safe. Sanitary drinking facilities shall be provided by means of disposable single-use cups, fountains of approved design, or separate, labeled or colored glasses for each child.

(6) An adequate and safe sewage disposal system shall be provided.

(7) Garbage cans shall be provided in sufficient number and capacity to store all refuse between collections and shall be corrosion resistant, fly tight, watertight and rodent proof with lids. Kitchen garbage containers must have lids or be stored in an enclosed area.

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(8) All food shall be from an approved source and shall be transported, stored, covered, prepared and served in a sanitary manner to prevent contamination.

(a) Milk and other dairy products shall be pasteurized.

(b) Use of home canned foods other than jams, jellies and fruits is prohibited.

(c) Perishable foods shall be kept at temperatures above 140°F or below 45°F.

(d) No persons with boils, infected wounds, respiratory diseases or other communicable diseases shall handle food or food utensils.

(e) All food utensils shall be properly washed and rinsed after each usage. A domestic style dishwasher may be used if equipped with a heating element.

(f) Single service utensils may only be used once.

(9) Folding of clean laundry must not take place on the same work surface used for sorting dirty laundry. Bedding shall be laundered when necessary and aired out periodically to prevent mildew. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 09 and 10 reserved

**37.95.711 GROUP AND FAMILY DAY CARE FACILITY NUTRITION**

(1) Nutritious meals and snacks must be provided to children in such quality and quantity to meet the national research council or the USDA child and adult care food program recommended dietary allowances for children of each age. Minimum nutritional requirements, age appropriate, will be supplied to the provider by the state or county health department.

(2) The above requirement in (1) shall be deemed to have been met if the provider provides nutritious meals and snacks as follows:

(a) children in care for a continuous period of five hours to 10 hours shall be provided at least one meal appropriate to the time of day and two snacks; or

(b) children in care for a continuous period of 10 hours or more shall be provided at least one meal every six hours and one snack between meals. The six hours requirement does not apply during the hours that the child is sleeping when night care is provided; or

(c) children in care for two to six hours shall be provided one snack every 2 1/2 hours.

(3) Special diet orders must be kept on file by the provider as submitted to the provider in writing by parents.

(4) For the child requiring a rigid diet, food shall be brought from home and labeled clearly.

(5) Menu plans shall be available to parent upon request.

(6) A record of food served shall be kept on file for at least one month.

(7) Meal and snack service to children and the preparation of food by children shall be carefully supervised.

(8) Fresh drinking water shall be available to children and offered at frequent intervals.

(9) Proper methods of handling, preparing, and serving food in a safe and sanitary manner shall be consistently implemented by the provider. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-731, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 12 through 14 reserved

**37.95.715 GROUP AND FAMILY DAY CARE HOMES, PROGRAM REQUIREMENTS** (1) A written plan of daily activities and routines, in addition to free play, must be established. The plan must be flexible to accommodate the ages and needs of individual children and the group as a whole. It must be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest.

(2) There must be developmentally appropriate activities for the children which foster sound social, intellectual, emotional and physical growth including:

(a) opportunities for individual and small group activities;  
(b) time and opportunity for creative experiences for children through art, music, books, and stories, and dramatic play;  
and

(c) outdoor play each day except when precluded by severity of weather.

(3) The provider or other caregiver who is at least 18 years of age shall be on the premises at all times children are in care.

(4) Providers shall use appropriate forms of discipline.

(a) Physical punishment, including spanking or shaking and other forms of corporal punishment are strictly prohibited in day care facilities. Discipline shall include positive guidance, redirection and the setting of clear limits that foster the child's ability to become self-disciplined.

(b) Any punishment or discipline which is humiliating, frightening, or otherwise damaging, is prohibited.

(c) Parental or guardian permission does not allow the use of punishments or disciplines prohibited in (4)(a) and (b) above.

(5) Television or movie watching during the hours children are in care shall not be excessive and shall be limited to child-appropriate programs. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

**37.95.716 GROUP CHILD CARE HOMES, SPECIAL PROGRAM REQUIREMENTS (REPEALED)** (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1992 MAR p. 798, Eff. 4/17/92; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.717 GROUP CHILD CARE HOMES, ADDITIONAL REQUIREMENTS  
(REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1993 MAR p. 941, Eff. 7/1/93; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.718 GROUP DAY CARE AND FAMILY DAY CARE HOMES, NIGHT CARE AND OVERLAP (1) Day care homes offering night care must develop plans for program, staff, equipment and space which will provide appropriately for the personal safety and emotional and physical care of children away from their families at night.

(2) This requirement shall be deemed to have been met if:

(a) special attention is given by the caregiver and the parents to provide for a transition into this type of care appropriate to the child's emotional needs;

(b) a selection of toys for quiet activities which can be used with minimal adult supervision is provided for children prior to bedtime;

(c) bathing facilities, comfortable beds or cots, and complete bedding are provided;

(d) staff are available to assist children during eating and pre-bedtime hours and when dressing;

(e) during sleeping hours, staff have a plan of supervision which involves practices where no child is left alone and staff are in the immediate vicinity and on the same floor level of sleeping children in order to adequately hear the children should they wake and to provide for the needs of children and respond to any emergency; and

(f) at appropriate times a nutritious dinner and/or breakfast is served to children and a bedtime snack is offered.

(3) An individual day care provider may not provide care consecutively day and night without at least one additional caregiver. No caregiver may have responsibility for the care and supervision of children for more than 12 consecutive hours in a 24 hour period.

(4) Overlap care may be approved by the department in situations, such as before and after school, when the number of children in care over three years of age would exceed, for a short period of time, the registered capacity.

(a) Overlap of children under three years of age shall not be permitted.

(b) Overlap care shall not exceed three hours total in any day care day.

(c) Group day care facilities may be approved to provide overlap care for up to four additional children during the approved overlap time if there are at least two caregivers providing direct care at any time there are more than eight children being cared for at the facility.

(d) Family day care homes may care for two additional children during the approved overlap time.

(e) Day care facilities providing two shifts of 12-hour care may be granted three hours of overlap care for each 12 hours of continuous care upon the written approval of the department representative.

(f) There must be 35 square feet per child of indoor space including the additional children during approved overlap hours.

(g) If a provider wishes to provide overlap care, the provider shall file a written plan for this care stating the specific hours in which the overlap will occur and the arrangements for providing adequate activities and supervision to all children during this period.

(h) Overlap care shall not occur until the provider has received written approval of this plan from the department.

(i) Group day care homes which exceed 12 children during approved overlap may be subject to inspection by the state fire prevention and investigation bureau and the state sanitarian. (History: Sec. 52-2-731 and 52-2-735, MCA; IMP, Sec. 52-2-723, 52-2-731 and 52-2-735, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00; AMD, 2002 MAR p. 2231, Eff. 8/16/02.)

Rule 19 reserved

37.95.720 GROUP AND FAMILY DAY CARE HOMES, EQUIPMENT

(1) Play equipment and materials must be provided that are appropriate to the developmental needs, individual interests, and ages of the children. There must be a sufficient amount of play equipment and materials so that there is not excessive competition and long waits.

(2) Play equipment and materials must include items from each of the following six categories: dramatic role playing, cognitive development, visual development, auditory development, tactile development and large-muscle development.

(3) High chairs, when used, must have a wide base and a safety strap. Portable high chairs that hook onto tables are not allowed.

(4) Each child, except school-age children who do not take naps, shall have clean, age-appropriate rest equipment, such as a crib, cot, bed or mat. Seasonably appropriate top and bottom covering, such as sheets or blankets, must be provided. Crib mattresses and other rest equipment shall be waterproof and regularly sanitized. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.721 GROUP CHILD CARE HOMES, SWIMMING (REPEALED)

(History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.722 GROUP CHILD CARE HOMES, TRANSPORTATION

(REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 23 through 25 reserved

**37.95.726 GROUP CHILD CARE HOMES, PARENT INVOLVEMENT (REPEALED)** (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 712, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 27 through 29 reserved

37.95.730 GROUP DAY CARE AND FAMILY DAY CARE HOMES, REGISTRATION SERVICES PROVIDED (1) The department will provide the following:

- (a) assistance to the applicant to meet registration requirements;
- (b) referral services concerning children's problems; and
- (c) consultation to the day care provider in providing enrichment experiences for the children, proper environment and nutrition.

(2) The department may investigate and inspect the conditions and qualifications of any family day care home and group day care home holding a registration certificate.

(3) The department will visit and inspect at least 20% of all registered family day care homes and group day care homes. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-731 and 52-2-733, MCA; NEW, 2000 MAR p. 2415, Eff. 9/8/00.)

Subchapter 8 reserved

## Subchapter 9

## Family Child Care Homes

**37. 95. 901 FAMILY CHILD CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (REPEALED)** (History: Sec. 53-4-503 and 52-2-704, MCA; IMP, Sec. 53-4-504, 52-2-702, 52-2-704 and 52-2-731, MCA; NEW, 1982 MAR p. 717, Eff. 4/16/82; AMD, 1985 MAR p. 177, Eff. 2/15/85; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1993 MAR p. 1210, Eff. 6/11/93; AMD, 1994 MAR p. 958, Eff. 4/15/94; AMD, 1995 MAR p. 472, Eff. 3/31/95; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 02 through 04 reserved

**37.95.905 FAMILY CHILD CARE HOMES, BUILDING REQUIREMENTS**  
 (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 717, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

**37.95.906 FAMILY CHILD CARE HOMES, FIRE SAFETY REQUIREMENTS**  
 (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 717, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37. 95. 907 FAMILY CHILD CARE HOMES, SAFETY REQUIREMENTS

(1) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

(2) All medication must be kept in a place inaccessible to children, in their original containers, labeled with the original prescription label.

(3) No extension cord will be used as permanent wiring and all appliance and lamp cords must be suitably protected to prevent pulling or chewing by children.

(4) Any pet or animal, present at the home, indoors or outdoors with the provider's permission, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The provider must make reasonable efforts to keep stray animals off the premises.

(5) Guns and ammunition must be kept in locked storage or out of the reach of children and with guns stored separate from ammunition.

(6) The home must be clean and free from accumulation of dirt, rubbish, or other health hazards.

(7) Any outdoor play area must be maintained free from hazards such as wells and machinery. If any part of the play area is adjacent to a highway, drainage ditch, holes, or other hazardous areas, the play area must be enclosed with fencing or natural barriers to restrict children from these areas.

(8) Toys and objects with a diameter of less than one inch (2.5 centimeters), objects with removable parts that have a diameter of less than one inch (2.5 centimeters), plastic bags, and styrofoam objects must not be accessible to children who are still placing objects in their mouths.

(9) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions. (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 717, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881.)

Rules 08 and 09 reserved

37.95.910 FAMILY CHILD CARE HOMES, OTHER FACILITY REQUIREMENTS (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 717, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.911 FAMILY CHILD CARE HOMES, PROGRAM REQUIREMENTS (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 717, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.912 FAMILY CHILD CARE HOMES, TRANSPORTATION (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 717, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.913 FAMILY CHILD CARE HOMES, OVERLAP CARE (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 717, Eff. 4/16/82; AMD, 1985 MAR p. 2041, Eff. 12/27/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1992 MAR p. 798, Eff. 4/17/92; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

## Subchapter 10

## Infant Day Care

**37. 95. 1001 DAY CARE FACILITIES CARING FOR INFANTS, DIAPERING AND TOILET TRAINING** (1) A sufficient supply of clean, dry diapers shall be available and diapers shall be changed as frequently as needed. Disposable diapers, a commercial diaper service, or reusable diapers supplied by the child's family may be used. If non-disposable diapers are used, the facility may launder the diapers using a germicidal process approved by the state or local health department. In the absence of such a process, the facility may not launder non-disposable diapers of enrolled children.

(2) Soiled reusable diapers shall be placed into separate cleanable covered containers provided with waterproof liners prior to transport to laundry, parent, or acceptable disposal. These containers shall be emptied, cleaned and disinfected daily. Soiled disposable diapers shall be disposed of immediately into an outside trash disposal or put in a securely tied plastic bag and discarded indoors until outside disposal is possible. Reusable diapers shall be removed from the facility daily.

(3) Diaper-changing surfaces shall be cleaned after each use by washing or by changing a pad or disposable sheeting and sanitized or covered for reuse.

(4) Soft, absorbent, disposable towels or clean reusable towels which have been laundered between each use shall be used for cleaning the child.

(5) Safety pins shall be kept out of reach of infants and toddlers.

(6) Children shall not be left unattended on a surface from which they might fall.

(7) All toilet articles shall be identified and separated as to each child and kept in a sanitary condition.

(8) Diapering and toileting areas shall contain a wash basin that is separate from that used for food preparation.

(9) Toilet training shall be initiated when the child is ready and in consultation with the child's parents or placement agency. There shall be no routine attempt to toilet train children under the age of 18 months. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.1002 DAY CARE FACILITIES CARING FOR CHILDREN'S WET OR SOILED CLOTHING (1) Wet or soiled clothing shall be changed promptly. Parents shall provide additional clothing and it is the responsibility of the parents to care for the clothing.

(2) If an older, toilet trained child has an accident causing wet or soiled clothes, the child shall be changed promptly. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.1003 DAY CARE FACILITIES CARING FOR INFANTS, FEEDING (1) An individualized diet and feeding schedule shall be provided according to a written plan submitted by the parents or by the child's physician with the knowledge and consent of the parents, guardian or placement agency. A change of diet and schedule shall be noted on each child's daily diet and feeding schedule.

(2) A day's supply of formula or breast milk in nursing bottles or formula requiring no more preparation than dilution with water shall be provided by the parents, unless an alternative agreement is reached between the parents and provider ensuring that the infant's nutritional needs are sufficiently met. Bottles of formula or breast milk shall be clearly labeled with each infant's name and date and immediately refrigerated. After use bottles shall be thoroughly rinsed before returning to the parent at the end of the day. Special dietary foods required by the infant shall be prepared by the parents.

(3) Bottles shall not be propped. Infants too young to sit in high chairs shall be held in a semi-sitting position for all bottle feedings. Children who use a bottle should not be allowed to lie on their backs when drinking from the bottle. Older infants and toddlers shall be fed in safe high chairs or at baby feeding tables. Infants six months of age or over who show a preference for holding their own bottles may do so provided an adult remains in the room and within observation of the infant. Bottles shall be taken from the infant when the child finishes feeding, when the bottle is empty and while the infant is sleeping.

(4) If the parent is unable to bring sufficient or usable formula or breast milk, the facility may use commercially prepared and packaged formulas. Older infants shall be provided suitable foods which encourage freedom in self-feeding. Unused infant food shall be stored in the original container and kept separate from other foodstuffs. Dry cereal, cookies, crackers, breads and similar foods shall be stored in clean, covered containers.

(5) If the container in which the formula was purchased does not include a sanitized bottle and nipple, then transfer of ready-to-feed formula from the bulk container to the bottle and nipple feeding unit must be done in a sanitary manner in the kitchen. Bottles filled on the premises of the facility should be refrigerated immediately if not used and contents discarded if not used within 12 hours.

(6) If bottles and nipples are to be used by the facility, they must be sanitized by boiling for five minutes or more just prior to refilling. Terminal (one-step) sterilization of bottles, nipples and formula is acceptable. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.1004 DAY CARE FACILITIES CARING FOR INFANTS, BATHING (1) Bathing shall not be done routinely by the facility but if required:

- (a) no child shall be left unattended in the bathing area;
- (b) bathing materials shall be sanitized after bathing a child;
- (c) nonallergenic soap shall be used;
- (d) arrangements shall be made so a child can not turn on hot water while being bathed. Water supply to bathing area will not be over 120° F; and
- (e) the bathing area shall be out of drafts and provisions should be made so the child may be completely dried after a bath. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.1005 CHILD CARE FACILITIES CARING FOR INFANTS, SLEEPING (1) There shall be adequate opportunities for sleep periods during the day suited to the infants' individual needs.

(2) Infants shall be provided with cribs for sleeping until, at the discretion of the parent and provider, they are safe on a cot or mat. Cot or mat surfaces may be of plastic or canvas or other material which can be cleaned with detergent solution and allowed to air dry.

(3) Cribs shall be made of durable, cleanable, nontoxic material and have secure latching devices. Cribs shall have no more than 2 and 3/8 inches of space between the vertical slats. Mattresses shall fit snugly to prevent the infant from being caught between the mattress and crib siderail. Crib mattresses shall be waterproof and easily sanitized. Cribs, cots or mats shall be thoroughly cleansed before assignment to another infant.

(4) Cribs, cots or mats shall be spaced to allow for easy access to each child, adequate ventilation, and easy exit. Aisles between cribs or cots shall be kept free of obstructions while cribs or cots are occupied.

(5) Each infant shall have been provided by the parent with a clean washable blanket or other suitable covering for his/her use while sleeping. Each infant's bedding shall be stored separate from bedding used by other infants.

(6) All cries of infants shall be investigated. (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881.)

Rules 06 through 09 reserved

37.95.1010 DAY CARE FACILITIES CARING FOR INFANTS, TRANSPORTATION (REPEALED) (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00; REP, 2002 MAR p. 2231, Eff. 8/16/02.)

37.95.1011 DAY CARE FACILITIES CARING FOR INFANTS, ACTIVITIES (1) All infants shall have ample opportunity during each day for freedom of movement, such as creeping or crawling or rolling in a safe, clean, open, uncluttered area.

(2) An infant who is awake shall not spend more than 30 minutes of consecutive time confined in a crib, playpen, jump chair, walker or highchair.

(3) Each infant shall have individual personal contact and attention by the same adult on a regular daily basis at least once each hour during nonsleeping hours. Examples of personal contact and attention include being held, rocked, taken on walks inside and outside the center, talked to and played with.

(a) There shall be sufficient staff so that an adult is always present and supervising.

(4) There shall be provisions for the infant to safely explore and investigate the environment. There shall be both stimulation and time for quiet activity. Infants shall be taken outside for some period during each day in good weather.

(5) Each infant shall be allowed to maintain the child's own pattern of sleeping and waking period according to instructions from the parents. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 12 through 14 reserved

37.95.1015 DAY CARE FACILITIES CARING FOR INFANTS, OUTDOOR ACTIVITIES (1) Children shall be protected from draft and prolonged exposure to direct sunlight. With the parent's permission, sun screen shall be applied to children over six months old when outdoor conditions dictate.

(2) The outdoor activity area shall be adjacent to the facility, fenced and free of hazards which are dangerous to the health and life of the children. Every time a child is outdoors, the child must be supervised by a caregiver.

(3) Adequate protection against insects shall be provided.

(4) Provision shall be made for both sunny and shady activity areas. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

37.95.1016 DAY CARE FACILITIES CARING FOR INFANTS, EQUIPMENT (1) Feeding tables equipped with a harness or highchairs with a broad base and a harness for securing the child, shall be provided for every four children.

(2) The facility shall provide, adequate and safe equipment such as walkers, swings, playpens, jump chairs and adult rocking chairs. All equipment must meet current federal safety regulations. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

Rules 17 through 19 reserved

37. 95. 1020 CHILD CARE FACILITIES CARING FOR INFANTS, STAFF REQUIREMENTS (REPEALED) (History: Sec. 53-4-503, MCA; IMP, Sec. 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; REP, 2000 MAR p. 2415, Eff. 9/8/00.)

37. 95. 1021 DAY CARE FACILITIES CARING FOR INFANTS, SPECIAL REQUIREMENTS FOR DAY CARE CENTERS (1) Day care centers shall post each infant's diet and schedule in an area clearly visible to the center's infant care staff.

(2) Individual storage space that is labeled for the infant's clothing and other personal items shall be provided.

(3) Each infant shall be assigned a primary caregiver. There shall be sufficient staff so that an adult is always present and directly supervising infants.

(4) Clothing worn to and from work by the day care center staff members shall be covered by or replaced with clean comfortable non-irritating washable smock or similar clothing.

(5) Play areas for infants shall be separate from older children's play areas, or not be used for any other group of children while being used for infants. Sleeping areas shall be separate from play areas. (History: Sec. 52-2-704 and 53-4-503, MCA; IMP, Sec. 52-2-731 and 53-4-504, MCA; NEW, 1982 MAR p. 722, Eff. 4/16/82; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 2881; AMD, 2000 MAR p. 2415, Eff. 9/8/00.)

**Chapter 96 reserved**